

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SWAIN CLARKE,

Petitioner,

v.

B. TRATE,

Respondent.

Case No. 1:22-cv-00820-ADA-CDB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS DISMISSING WITH
PREJUDICE AS TO PETITIONER’S ESCAPE
HATCH CLAIM AND WITHOUT PREJUDICE AS
TO PETITIONER’S UNCONSTITUTIONAL
CUSTODY CLAIM WITH LEAVE TO AMEND

(ECF No. 15)

Petitioner Swain Clarke (“Petitioner”) is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1.) Petitioner seeks review of his custody and review of the judgment and sentence imposed on him by the United States District Court for the District of Maryland. Petitioner filed a first amended petition for writ of habeas corpus on September 7, 2022. (ECF No. 11).

On December 14, 2022, the assigned Magistrate Judge screened the petition. (ECF No. 15). The Magistrate Judge found Petitioner’s claim relating to his sentencing and the plea agreement did not fit within the escape hatch exception to the general bar against using § 2241 to collaterally attack a conviction or sentence imposed by a federal court and must be dismissed for lack of jurisdiction. (*Id.*) Moreover, the Magistrate Judge found that Petitioner also failed to state a claim for unconstitutional custody. (*Id.*) Accordingly, the Magistrate Judge recommended that Petitioner’s petition be dismissed with prejudice as to the escape hatch claim and be dismissed without prejudice as to the unconstitutional

1 custody claim. (*Id.*) The findings and recommendations advised Petitioner that he must file any
2 objections within 30 days after service of the order and that the “failure to file objections within the
3 specified time may waive the right to appeal the District Court’s order.” (*Id.* at 8.) Petitioner did not
4 file objections or any other response to the findings and recommendations, and the deadline to do so has
5 expired.


6 Pursuant to 28 U.S.C. § 636(b)(1)(C), and Local Rule 304, this Court conducted a *de novo* review
7 of this case. Having carefully reviewed the entire matter, this Court concludes the findings and
8 recommendations are supported by the record and by proper analysis.

9 Accordingly,

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- 11 1. The December 14, 2022, Findings and Recommendations, (ECF No. 15), are adopted in full;
 - 12 2. Petitioner’s escape hatch claim is dismissed with prejudice;
 - 13 3. Petitioner’s unconstitutional custody claim is dismissed without prejudice; and
 - 14 4. Petitioner shall be provided 30 days from the date of service of this order to file a second
15 amended petition to the extent Petitioner in good faith can cure the deficiencies in his
16 unconstitutional custody claim identified in the assigned Magistrate Judge’s adopted findings
17 and recommendations. (ECF No. 15).

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19 IT IS SO ORDERED.

20 Dated: March 7, 2023

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23 UNITED STATES DISTRICT JUDGE
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